

TITLE 6. CRIMINAL PROCEDURE

Chapter 6.3

SENTENCING

Sections:

6.3.1	Judgment of Conviction.
6.3.2	Discretion of Court.
6.3.3	Payment of Fine.
6.3.4	Probation.
6.3.5	Violation of Probation.
<u>6.3.6</u>	<u>Penalty Upon Revocation of Probation.</u>
<u>6.3.7</u>	<u>Duration of Probation.</u>
<u>6.3.8</u>	<u>Credit for Time Served.</u>
<u>6.3.9</u>	<u>Restitution.</u>
<u>6.3.10</u>	<u>Judgments and Convictions – Domestic Violence, Family Violence, or Stalking.</u>

6.3.1. Judgment of Conviction. (a) After a verdict, finding, or plea of guilty, the defendant will have the right to be sentenced without unreasonable delay. Pending sentencing, the Court may commit the defendant or continue or alter the bail as provided by law. Before imposing a sentence the Court will afford the defendant or defense counsel an opportunity to speak on the defendant's behalf and to present any information in the mitigation of punishment.

(b) The Court may order or consider any pre-sentence reports offered by the parties. The offender and the offender's counsel will be afforded an opportunity to examine any pre-sentence report and to cross-examine the report's preparer on the basis for any sentencing recommendations contained in the report.

(c) The pre-sentence report will contain any prior criminal or juvenile prosecution record of the defendant but will not contain any information relating to criminal or juvenile prosecutions in which the defendant was found not guilty. In addition, the report will include such other available information as may be helpful to the Court in the disposition of the case. Within a reasonable time after a verdict or plea of guilty and after such pre-sentencing investigation as the judge may direct,

(d) The judge shall will sentence the defendant in conformity with the applicable provisions of this title and deliver to the law enforcement officer a signed copy of the sentence. The judgment of conviction shall will state the charge, the plea, the verdict, and the sentence. The judge will sign the judgment shall will be signed by the judge and the clerk will enter it entered in the official records by the clerk. The judgment shall direct that the prisoner be held in custody until the prisoner has satisfied the sentence according to law.

(e) To the extent that any foreign provisions incorporated into Tribal law provide a penalty that conflicts with Tribal sentencing law, Tribal sentencing law will control. All sentences stemming from offenses occurring in the same transaction or course of conduct are presumed to run consecutively but may be ordered to run concurrent by Court order. Where the Court in its discretion deems it appropriate, a form of traditional punishment may be imposed in addition to or in place of any punishment provided in this code.

(f) Considerations in sentencing include:

- (1) The crime committed;
- (2) The prospects of **the offender's** rehabilitation;
- (3) The circumstances under which the crime was committed;
- (4) The **offender's** criminal history;
- (5) The safety of the community, victim, or the offender;
- (6) **The victim's** statements;
- (7) Alternatives to imprisonment of the offender;
- (8) The **offender's** ability to pay a fine; and
- (9) Any other consideration the Court deems relevant.

(g) An offender found guilty of an offense may be sentenced to one or more of the following penalties and/or consequences:

- (1) Imprisonment for a period of time not to exceed the maximum permitted for the offense;
- (2) A fine in an amount not to exceed the maximum permitted for the offense;
- (3) Community service;
- (4) Any diagnostic, therapeutic, or rehabilitative measures, treatments, or services deemed appropriate;
- (5) Restitution to a victim-;
- (6) Participation in an Elders Panel or other alternative court program such as Wellness Court;

(7) Suspension of all or part of the sentence under such terms imposed by the Court;

(8) Deferred imposition of sentence with reasonable restrictions and conditions monitored by the Tribal probation officer, and with the following characteristics (felony offenses are not subject to a deferred imposition of sentence):

(A) The deferral period may not exceed three (3) years; ~~and~~

(B) Upon a finding of violation of a restriction or condition of deferral, an appropriate sanction may be ordered, including imposition of sentence; ~~and~~

(C) Whenever the Court has deferred the imposition of sentence, and after expiration of the ~~deferral~~ period and the defendant's successful completion of any ~~deferral~~ conditions, upon motion by the Court, the defendant, or the defendant's counsel, the Court will allow the defendant to withdraw their plea of guilty or strike the verdict or judgment ~~from the Court records by entering an order of dismissal of charges.~~

(9) Prohibiting the offender from owning or carrying a dangerous weapon;

(10) Restricting the offender's freedom of movement;

(11) Restricting the offender's freedom of association;

(12) Requiring the offender, if employed, to remain employed and, if unemployed, to actively seek employment;

(13) Subjecting the offender to search of their residence, vehicle, and person; ~~and~~

(14) Any requirement or limitation intended to improve the ~~offender's mental or physical health or marketable skills, or to protect the community.~~
(Prior code Ch. III, Art. III, §3; ~~amended by Res.~~)

6.3.2. Discretion of Court. Any confinement order of the judge may provide for the serving of sentence on weekends, labor for public purposes while confined or in lieu thereof, or confiscation of any material substance or equipment used in wrongful and illegal acts. (Prior code Ch. III, Art. II, §1)

6.3.3. Payment of Fine. (a) When the defendant is sentenced to pay a fine, the Court may permit payment within a definite period or by installment. In the absence of such

permission, a fine ~~shall will~~ be payable forthwith. Fines and any installments thereof ~~shall be are~~ payable to the clerk.

(b) Upon receiving the monies:

(1) A receipt will be issued to the paying person;

(2) The ~~offender's~~ account will be credited, noting whether the fine is paid in full or what balance, if any, remains due; and

(3) The monies ~~will~~ be transferred to the ~~Tribes~~'s General Fund, unless otherwise specifically directed by a provision of this code.

(c) If a defendant sentenced to pay a fine fails to make payment as ordered, the ~~probation officer~~ or the ~~prosecutor~~ may move that the offender show cause why ~~sanctions should not be imposed for failure to pay.~~ The burden is on the offender to establish by a preponderance of the evidence that they have made a sufficient effort to pay their financial obligation. If the Court determines that the offender made a sufficient effort to pay, the Court may allow the offender additional time to pay, allow the offender to satisfy ~~the~~ debt through community service, or reduce the amount owed.

(d) In imposing any fine authorized by Tribal law, the Court will make an individualized assessment regarding an offender's ability to pay the fine. (Prior code Ch. III, Art. III, §4; ~~amended by Res.~~)

6.3.4. Probation. (a) After conviction of an offense, the Court may, ~~upon its own motion or a party's motion,~~ ~~upon~~ impose such reasonable terms and conditions as it considers necessary ~~and,~~ suspend ~~all or a portion of a any~~ sentence and release the prisoner on probation. In granting probation, the judge ~~shall will~~ consider the prior criminal record of the prisoner; ~~his or her~~ ~~the~~ ~~prisoner's~~ background, character, financial conditions, family obligations, ~~and any other reasonable and relevant circumstances.~~

(b) Reasonable terms and conditions of probation include, but are not limited to:

(1) To meet the probationer's family responsibilities;

(2) To ~~require~~ job applications, maintain employment and/or education;

(3) To undergo available medical or psychiatric treatment, to attend regular rehabilitation programs, or to enter and remain in a specified institution;

(4) To pursue a particular course of study or vocational training;

(5) To attend or reside in a facility established for the instruction, recreation, or residence of persons on probation;

(6) To restrict a probationer from patronizing venues that sell or serve drugs or alcohol;

(7) To possess no firearm or other dangerous weapon unless the Court grants written permission;

(8) To make restitution or reparation for the loss or damage of the probationer's unlawful acts, as the Court may direct;

(9) To remain within the Court's jurisdiction and not to leave that jurisdiction without the Court's permission, and to notify the Court or one of its officers of any change in address or employment;

(10) To report as directed to the Court, probation officer, or other person the Court designates;

(11) To restrict the probationer's living arrangements;

(12) To consent to searches of the ~~sup~~probationer's cell phone without a warrant, probable cause, or reasonable suspicion;

(13) To register the probationer's social media accounts, usernames, and passwords;

(14) To post a bond, with or without surety, subject to the performance of any of these conditions; or

(15) To satisfy any other conditions reasonably related to the defendant's rehabilitation. ~~and other reasonable and relevant circumstances; and other conditions as specified in the Rules of Court, STC Chapter 3.8. (Prior code Ch. III, Art. III, §7; amended by Res.)~~

6.3.5. Violation of Probation. (a) A probation officer may request that the Court issue an arrest warrant for a probationer alleged to be in violation of probation. The warrant request will be accompanied by an affidavit signed under penalty of perjury that includes sufficient facts to establish probable cause that the probationer has violated a condition of probation. Arrest warrants for probationers will be issued as no bail warrants, provided the judge in the judge's discretion may set a cash bail. Probationers are not entitled to notice and an opportunity to be heard prior to the Court issuing the warrant. The Court will not schedule a hearing on the probation officer's motion unless the affidavit fails to establish probable cause, and the probation officer requests a hearing to put additional facts on the record.

(b) A probation officer may cause a probationer to be arrested for violation of a condition of probation. Any probation officer may cause the arrest of the supervised offender without a warrant by providing Tribal police with a statement that the probation

officer has found probable cause to believe the offender has violated the conditions of the offender's probation.

(c) If the initial probable cause statement is oral, the probation officer will prepare a written statement within twenty-four (24) hours of the arrest. The probation officer's statement is sufficient to commit the offender to incarceration pending a probable cause determination by the Tribal Court.

(1) In the event of arrest, the probation officer or the prosecutor will file a petition for revocation of probation, which will include, but not be limited to, facts showing the basis for the arrest and for revocation of probation.

(2) A probationer arrested without a warrant is entitled to determination of probable cause for the grounds for their arrest by a Tribal Court judge within three (3) judicial days of the time of arrest. The offender's presence is required for the judge to make the probable cause determination. If probable cause is found, the arrested probationer will be, or remain, incarcerated without bail until the probation revocation hearing is held, provided the judge in the judge's discretion may set bail and such other conditions for release.

(d) A probationer who is arrested for a probation violation and who remains incarcerated on the first Monday after the arrest must appear no later than the following regular criminal calendar. The probation revocation hearing will be set for no later than the tenth (10th) judicial day after that appearance date, unless good cause for delay exists. The burden is on the party asking for the delay to show that good cause exists.

(e) The probationer will be entitled to notice of the date and time of the hearing, and the grounds for the proposed revocation. Notice to the probationer may be accomplished by personal service or service by first class mail to the probationer's mailing address on record with the Tribal Court.

(f) A violation of a condition is deemed to be a knowing violation if the probationer signed, and was given a copy of, the conditions of the probation, or was informed by the Court, probation, or otherwise of the conditions of the probation.

(g) Supervised offenders or any probationers do not have a right to a jury trial at a revocation hearing.

(h) If the probationer admits to violating a condition of probation, the Court may revoke the probation after the probationer has had the opportunity to offer testimony or evidence regarding any circumstances tending to mitigate the violation.

(i) If the probationer does not admit to violating a condition of the probation, the prosecutor or probation officer has the burden of proving by a preponderance of the evidence that the probationer violated a condition of the probation. Evidence may not be suppressed on the ground that, if an admission of a violation, no warning was given

of a right not to incriminate oneself. The judge may issue an order that any testimony or information from the defendant may not be used against the defendant in any criminal case arising from the same charge or incident that is the basis for the revocation.

(j) Revocation may be based on demonstrably reliable hearsay evidence unless the judge requests witnesses present on the issue. The prosecutor may show any aggravating circumstances, and the probationer may show any mitigating circumstances.

(k) The Court will determine the appropriate disposition of a petition for revocation. An order revoking probation must be in writing. (Prior code Ch. III, Art. III, §8; amended by Res.)

6.3.6. Penalty Upon Revocation of Probation. A probationer who is found, after a hearing, to have violated a probation condition of his or her probation may be required:

(a) In the case of probation during a suspended sentence, to serve the term of the original sentence in whole or in part, including incarceration and payment of fines; or

(b) In the case of deferred imposition of sentence, to serve such sentence as the Court may impose after a sentencing hearing.

(c) Probation will be reinstated after the probationer completes a sanction, unless the Court orders otherwise. If no sanction is imposed, probation will continue.

(d) Conditions of probation, including the term length of probation, may be modified with written consent of the prosecutor and defendant and Court approval. (Res.)

~~If any person shall violate his or her probation, he or she may be required to serve his or her original sentence plus an additional penalty for violation of his or her probation, but the Court shall not revoke probation except after a hearing at which the defendant shall be present and advised of the grounds on which such action is proposed. The defendant may be admitted to bail pending such hearing. (Prior code Ch. III, Art. III, §8)~~

6.3.7. Duration of Probation. (a) When an offender is sentenced pursuant to this chapter, the Court may suspend execution of all or part of the sentence upon conditions for a maximum period of:

(1) Five (5) years, for offenders sentenced for a violation of STC chapter 7.25 involving the use of alcohol or drugs.

(2) Ten (10) years, for offenders sentenced for felony offenses.

(3) Three (3) years, for offenders sentenced for all other crimes.

(b) The probationary period begins when an offender is released from custody. The probationary period will toll while the offender is in custody for another jurisdiction, if the offender is reincarcerated for a Suquamish matter, or if the offender absconds from the Court's jurisdiction. A warrant issued by any Tribal, Federal, or State court matter will toll the probationary period for all cases. (Res.)

6.3.8. Credit for Time Served. (a) A defendant subject to a judgment of imprisonment will be allowed credit for each day of incarceration prior to or after conviction for that offense. This does not include time served pursuant to a violation of a release order. No credit will be allowed for time served on other charges and/or for other jurisdictions unless specifically provided by the Court. A defendant will receive one (1) day credit for every two (2) days spent on partial confinement, such as home detention.

(1) If a defendant has served any of the defendant's sentence under a commitment based upon a judgment that is subsequently declared invalid or that is modified during the term of imprisonment, the time served must be credited against any subsequent sentence received upon a new commitment for the same criminal act or acts. This does not include time served pursuant to a violation of a release order.

(2) Electric monitoring of a defendant is excluded from credit ~~for~~ time served.

(b) Any person incarcerated on a bailable offense who does not supply bail and against whom a fine is levied on conviction of the offense must be allowed a credit for each day of incarceration prior to conviction, except that the amount allowed or credited may not exceed the amount of the fine. The daily rate of credit for incarceration is \$150.00 per day. This does not include time served pursuant to a violation of a release order. (Res.)

6.3.9. Restitution. (a) Upon a finding of guilty, the Tribe may request an order of restitution at any time prior to the completion of the sentencing hearing or, with the judge's permission for good cause shown, within sixty (60) days of the sentencing hearing.

(b) In the judge's discretion, the judge may decide the question of restitution at the time of the sentencing hearing or at a separate restitution hearing conducted after sentencing.

(c) The judge will determine the economic loss suffered by the victim or victims that is causally connected to the defendant's actions and then may, in the judge's discretion, set a maximum restitution amount not exceeding that loss. The Tribe bears the burden of showing the economic loss by a preponderance of the evidence.

(d) After determining the loss amount, the judge will conduct an inquiry into the defendant's ability to pay. The defendant bears the burden of showing by a

preponderance of the evidence the amount that the defendant is able to pay without creating a substantial financial hardship for the defendant or the defendant's dependents. The judge will determine the defendant's ability to pay and set a restitution payment schedule that does not exceed the defendant's ability to pay. If the defendant is incarcerated or sentenced to incarceration, the judge may, in the exercise of discretion, defer the determination of the defendant's ability to pay until the defendant's release from incarceration or until a reasonable period after the defendant's release from incarceration.

(e) At any time prior to the termination of probation, either party, any victim, or the probation officer may file a written motion requesting that the judge redetermine the defendant's ability to pay. Unless the motion lacks a reasonable basis, the judge will promptly hold a redetermination hearing. The probation officer must notify the victim or victims of the hearing. At a redetermination hearing, the defendant bears the burden of showing by a preponderance of the evidence the current amount that the defendant is able to pay without creating a substantial financial hardship for the defendant or the defendant's dependents. The judge will determine the defendant's current ability to pay and set a restitution payment schedule that does not exceed the defendant's ability to pay or the maximum restitution amount previously determined.

(f) Except at the defendant's request for good cause shown, the period of probation may not be extended because of unpaid restitution in the absence of a willful violation of the conditions of probation.

(g) All monies collected as the result of Court-imposed restitution will be paid to the Court. Upon receiving the monies:

(1) A receipt will be issued to the paying person;

(2) The account of the offender will be credited, noting whether the restitution is paid in full or what balance, if any, remains due; and

(3) The monies will be transferred to the person to whom restitution is to be paid.

(h) All Court-ordered restitution obligations may be enforced in the same manner as a judgment in a civil action by the party or entity to whom the restitution is owed.

(1) The judgment and sentence or subsequent Court order must identify the party or entity to whom restitution is owed and the amount owed.

(2) All Court-ordered restitution obligations may be enforced at any time during the ten (10) -year period following the offender's release from custody or within ten (10) years of entry of the judgment and sentence, whichever period is longer. Prior to the expiration of the initial 10-year period and notwithstanding the expiration of the probationary period, the Court may extend a restitution

obligation an additional ten (10) years for payment if the Court finds that the offender has not made a good faith attempt to pay.

(3) A party or entity to whom Court-ordered restitution is owed may utilize any collection remedies available to any party or entity to collect any other Court-ordered financial obligation. (Res.)

6.3.10. Judgments and Convictions – Domestic Violence, Family Violence, Sexual Abuse or Stalking. (a) When entering a judgment upon conviction for a crime involving domestic violence, family violence, Sexual Abuse or stalking, the Court must:

(1) Consider whether the offense was part of an ongoing pattern of psychological, physical, or sexual abuse of a victim or multiple victims, manifested by multiple incidents over a prolonged period of time;:

(2) Consider whether the offense occurred within the sight or sound of minor children, especially if the children are related to the defendant or the victim, including foster children and children in guardianships;:

(3) Enter orders for the protection of the victim, including a criminal no contact order, or those set out within chapters 5.12 and 5.13;

(4) Order restitution as warranted, which includes withholding the Suquamish Indian Tribe distribution payment of any tribal member convicted under this chapter for application to this restitution; and

(5) Order appropriate domestic violence perpetrator's treatment as warranted.

(A) For the purposes of this section, a domestic violence perpetrator's treatment assessment should include the following: an official copy of current and past criminal history; all violence history whether or not it resulted in a conviction; family and cultural issues; substance abuse issues; and a treatment plan that adequately and appropriately addresses the treatment needs of the individual. The intake may not be based solely on the defendant's self-report and the evaluator must make reasonable efforts to contact the victim. The defendant must sign privacy releases for the evaluator to obtain any confidential information that is necessary to the evaluation.

(B) Satisfactory completion of domestic violence treatment required under this section must be based on meeting treatment goals, not merely the completion of a certain period of time or certain number of sessions. The treatment must focus on ending the violence and holding the defendant accountable for the defendant's behavior. The treatment must include education about the individual, family, and cultural dynamics of

domestic violence. Treatment must include education about the effects of domestic violence on children. The defendant must sign privacy releases for the treatment provider to obtain any confidential information that is necessary to the treatment. The defendant must also sign a release for the treatment provider to provide information to the Court, the prosecutor and the probation office in order to monitor compliance with the court order.

(6) Inform the defendant that the defendant's rights to own or possess a firearm are restricted by tribal and federal law.

(7) Order any other lawful relief it deems necessary for the protection of any claimed, alleged, or potential victim(s) of domestic violence, including orders or directives to the Suquamish Police Department.

(b) Upon conviction of a crime involving domestic violence, the Tribe may commence exclusion proceedings consistent with §5.3.1. (Res.)